

Requirement and a species election requirement between SEQ ID NOS:1-4.

Election/Restriction

Applicants hereby elect to prosecute Group I (claims 25, 27, 29, 31, 32, 35, 43-44 and 46, drawn to a polypeptide, fusion protein, vaccine and a method for inducing an immune response using a polypeptide. Further, Applicants hereby elect to prosecute SEQ ID NO:2. The election of SEQ ID NO:2 is made with traverse for the reasons set forth below.

As stated in Administrative Instructions Under the PCT for Unity of Invention, the requirement of a technical interrelationship and the same or corresponding special technical features as defined in PCT Rule 13.2, "shall be considered to be met when the alternatives are of a similar nature." (See *MPEP, Eighth Edition, 2001, Administrative Instructions Under the PCT, Annex B, Unity of Invention, Part 1, Instructions Concerning Unity of Invention, (f) "Markush Practice", AI-54.*) Specifically, "they shall be regarded as being of a similar nature where the following criteria are fulfilled; (A) all alternatives have a common property or activity, and (B)(1) a common structure is present, i.e., a significant structural element is shared by all of the alternatives." *Id.* The Administrative Instructions provide examples of chemical compounds which fulfill unity of invention by having a common structure. *Id. at AI-61.* Example 18 describes compounds in which "the indolyl moiety is the significant structural element which is shared by all of the alternatives. *Id.* Example 19 describes compounds sharing a significant structural element of an iminothioether group linked to a six atom ring. *Id.*

Applicants assert that in sharing identity between at least 687 out of 691 amino acids over the length of SEQ ID NO:4, that SEQ ID NOS: 2 and 4 fulfill the requirement of "a common property and a significant structural element which is shared by all of the alternatives." As described in Figure 2 of the instant specification, a pair-wise comparison of SEQ ID NOS: 2 and 4 shows that the three polypeptides are all similar at an identity level greater than 99% over the length of SEQ ID NO:4 and greater than 95% over the length of SEQ ID NO:2, due in part to the 31 amino acid N-terminus extension of SEQ ID NO:2 compared to that of SEQ ID NO:4. In other words, the claimed polypeptide sequences are at least nearly identical in structure. Each of SEQ ID NOS: 2 and 4 were isolated from strains of *N. meningitidis*. Applicants assert that near identity sufficiently fulfills the criteria of "being of a similar nature" and having "significant structural element that is shared by all of the alternatives." Such sequences are at least as similar to one another as the compounds in Administrative Instructions Examples 18 and 19. For these

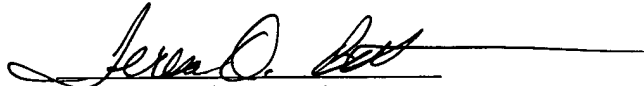
Serial No.: 09/889,267
Group Art Unit: 1645

reasons, restriction between SEQ ID NOS: 2 and 4 under PCT Rule 13.2 is improper.
Withdrawal is respectfully requested.

Closing Remarks

Entry of the Response and Amendment and allowance of the pending claims are respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Teresa O. Bittenbender", is written over a horizontal line.

Teresa O. Bittenbender
Registration No. 47,425
Attorney for Applicant

Date: December 2, 2002

DECHERT
1717 Arch Street
4000 Bell Atlantic Tower
Philadelphia, PA 19103-2789
Fax: (215) 994-2222
Attn: Teresa O. Bittenbender, Esq.
(215-994-2213)